



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## ELC DRAFTING TASK FORCE

### Meeting Agenda

**February 3, 2011**

**9:00 a.m. to noon**

**Washington State Bar Association**

**1325 Fourth Avenue – Suite 600**

**Seattle, Washington 98101**

1. **Call to Order/Preliminary Matters** (9:00 a.m.)
  - Approval of December 16, 2010 meeting minutes [pp. 1004-1009]
2. **Consent Calendar**
  - Subcommittee C July 23, 2010 Memo - Items for Consent [pp. 1010-1014]
3. **Discussion**
  - Subcommittee C July 23, 2010 Memo - Items for Discussion [pp. 1015-1022]
  - Subcommittee B - Report held over from June 10, 2010 [pp. 1023-1025]
  - ODC Memos re: ELC 15.5, 1.5, and 8.4 [pp. 1026-1033]
4. **Future meeting schedule**
  - March 17, 2011, 9:00 a.m. to 12:00 noon
    - Materials Deadline: Tuesday, March 8, 2011
  - May 19, 2011, 9:00 a.m. to 12:00 noon
    - Materials Deadline: Tuesday, May 10, 2011
5. **Adjourn** (noon)

**DRAFT Minutes – December 16, 2010**  
**ELC Drafting Task Force**

Present: Geoff Gibbs, Chair, Erika Balazs (phone), Randy Beitel, Kim Boyce, Kurt Bulmer, Ron Carpenter (phone), James Danielson (phone), Doug Ende, Seth Fine, Bruce Johnson, Joseph Nappi, Jr. (phone), Julie Shankland, Patrick Sheldon, Elizabeth Turner, Charlie Wiggins (phone), Scott Busby, Reporter, and Nan Sullins, AOC/Supreme Court Liaison

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**Call to Order/Approval of Minutes**

The Chair called the meeting to order at 9:08 a.m. Ms. Turner submitted corrections to p. 942 of the minutes from the October 28, 2010 meeting. The Chair called for further corrections. There being none, the minutes from the October 28, 2010 meeting stood approved as corrected.

**Subcommittee A - Final Report**

The Chair, having been called away temporarily, asked Mr. Johnson and Mr. Busby to continue the meeting with the remainder of Subcommittee A's final report.

**ELC 10.2 – (Hearing Officer Assignment) (pp. 947-948)**

Mr. Johnson introduced Subcommittee A's proposed changes to ELC 10.2. Ms. Shankland noted that under ELC 7.1(c)(1) or 7.1(c)(2) disciplinary counsel files a formal complaint without an order to hearing. Consequently, a hearing officer would be appointed without a matter having been "ordered to hearing" as provided in ELC 10.2(a). After some discussion of alternative language, Mr. Johnson accepted a friendly amendment deleting the language following "under rule 2.5" from proposed ELC 10.2(a).

Mr. Nappi voiced his concern that, under proposed ELC 10.2(b)(4), the chief hearing officer would be forced to wait until he had identified a new hearing officer before removing one. Mr. Beitel suggested that the appointment of a new hearing officer need not be simultaneous with removal of a hearing officer. Mr. Nappi asked if "upon" could be replaced with "after" in the last sentence of proposed ELC 10.2(b)(4). Mr. Johnson, on behalf of the subcommittee, accepted Mr. Nappi's suggestion as a friendly amendment.

Mr. Nappi shared his concerns regarding the change from "request" to "motion" in proposed ELC 10.2(b). Ms. Shankland explained that in the past, requests for removal have taken the form of informal letters that did not make it to the chief hearing officer. Mr. Nappi suggested that a requirement to file the request with the clerk would solve that problem. Mr. Johnson, on behalf of the subcommittee,

accepted a friendly amendment to retain the means of initiating a removal without cause in ELC 10.2(b)(1) as a “request” while clarifying that the means of initiating disqualification for cause in ELC 10.2(b)(2) is by “motion.” Mr. Johnson called the question and with none opposed, the subcommittee’s proposed changes to ELC 10.2 as amended were adopted.

### **ELC 10.3 – (Commencement of Proceedings) (p. 949)**

Ms. Turner reported that the proposal to give the hearing officer assigned to a case the power to sever charges ordered joined by the review committee generated spirited discussion in the subcommittee, and that the subsequent vote was close. The objection raised in the subcommittee was that it is not appropriate for a hearing officer to overrule the review committee’s order. Mr. Fine noted that the hearing officer is given broad authority under the rules to issue orders regarding the conduct of a hearing. Mr. Bulmer opined that the change, proposed by Mr. Summers, clarified the hearing officer’s power in that regard, expressing a hearing officer’s power to hear argument from the parties on a motion to sever. Mr. Beitel pointed out that the proposed change does not require argument by the parties, but gives a hearing officer the power to sever counts sua sponte. Ms. Shankland opined that the hearing officer should not be in a position to create a situation where multiple sanctions could issue instead of one.

Mr. Bulmer presented Mr. Summers’ reason for suggesting the change: a three week hearing that could have been much shorter if only the most serious offenses had been tried. The group discussed the efficiencies of trying the “lesser counts” in a long formal complaint. Mr. Beitel reminded the group of the bar’s duty as a self-regulating profession to protect the public. In this regard, the “lesser counts” often involve grievants who have a legitimate interest in the proceedings. Mr. Ende proposed a compromise: vest the authority to sever counts that have been consolidated in the chief hearing officer rather than the assigned hearing officer. Mr. Fine suggested that the proposed changes be amended to change “separate formal complaints” to “separate hearings.” Mr. Danielson opined that hearing officers already have the power to control how a matter is heard and the order in which charges are tried without this change to ELC 10.3. Mr. Johnson entertained a motion change “formal complaints” to “hearings.” With 10 in favor and 2 abstentions the motion to amend passed. Mr. Johnson then called for a vote on the subcommittee’s proposed changes to ELC 10.3 as amended. With 5 in favor and 8 opposed, the proposed changes failed. Consequently, as noted by Ms. Turner, the only change to be made to ELC 10.3 was the removal of “or panel” in ELC 10.3(c), conforming this rule to the previously approved change eliminating hearing panels.

**ELC 10.4 – (Notice to Answer) (pp. 950-951)**

Mr. Johnson introduced the subcommittee's proposed changes to ELC 10.4, consisting of the removal of reference to hearing panels. He called for a vote and with none opposed, the proposed changes to ELC 10.4 were adopted.

**ELC 10.5 – (Answer) (p. 952)**

Ms. Turner introduced the proposed change to ELC 10.5—another housekeeping amendment removing references to hearing panels—and moved its adoption. Mr. Johnson called for the vote. With none opposed, the proposed changes were adopted.

**ELC 10.6 – (Default Proceedings) (pp. 953-954)**

Ms. Turner informed the task force that Subcommittee A does not recommend adopting ODC's proposal that a default result in disbarment (pp. 967-970). Mr. Beitel said that ODC will support its proposal, but will not waste the task force's time if there is no other support for it. Ms. Shankland asked if a respondent lawyer would get notice of a new hearing officer should a hearing officer be removed after granting the default. Mr. Bulmer noted that ELC 10.6(b)(2) trumps a motion to set aside a default, but saw no reason to write rules for that remote possibility. Mr. Bulmer moved adoption of the subcommittee's proposed changes to ELC 10.6. Mr. Johnson called for the vote. With none opposed, the changes were adopted.

**ELC 10.7 – (Amendment of Formal Complaint) (p. 955)**

Mr. Turner introduced the subcommittee's proposed changes to ELC 10.7—removing the chair of the disciplinary board's involvement in consolidation of charges—and moved for adoption of the changes. Mr. Johnson called for the vote. With none opposed, the changes were adopted.

**ELC 10.8-10.11 – (pp. 956-958)**

Ms. Turner explained that the subcommittee was not recommending any new changes to these rules, which were included in the report for reference only.

**ELC 10.12 – (Scheduling of Hearing) (pp.959-961)**

Ms. Turner introduced the subcommittee's proposed changes to ELC 10.12: clarifying that a hearing may be scheduled without a scheduling hearing, adding a settlement conference process similar to that used in Superior Court, clarifying the witness list requirements, and adding sanctions for failure to comply. She and moved adoption of the proposed changes.

Mr. Beitel raised ODC's concern that proposed ELC 10.12(b) requires a hearing officer to convene a scheduling conference. The task force has approved amendments to the ELC that will allow diversion of a grievance after the filing of a formal complaint; the rule as proposed allows for the possibility that a scheduling conference will be set during negotiations for diversion. Mr. Beitel suggested striking "or upon expiration of the time to file an answer." Mr. Bulmer noted that answers may be delayed for a variety of reasons and expressed no opposition to Mr. Beitel's suggested amendment. Mr. Sheldon noted that Mr. Beitel's proposed amendment would mirror the process in medical disciplinary procedures. Mr. Johnson accepted Mr. Beitel's suggestion as a friendly amendment on behalf of the subcommittee and moved adoption of the changes to ELC 10.12 as amended.

Mr. Nappi objected to the requirement in proposed ELC 10.12(c)(2) that hearing officers include a settlement conference determination because a hearing officer may not yet know the case or the parties well enough to make the determination. Mr. Wiggins explained that the proposed language was a response to a suggestion that arose from the discussions of the BOG Discipline Committee: that a settlement conference be held in every case. The Discipline Committee's goal had been to assure that the determination be made, although the Committee had proposed that the chief hearing officer make that determination. Ms. Turner explained that the subcommittee believed that the assigned hearing officer would be in a better position to make the determination. Mr. Beitel suggested that permissive rather than mandatory language would be appropriate. Mr. Sheldon opined that the scheduling order is too early in the process for a hearing officer to make the determination that a settlement conference will be helpful. He said that in medical discipline cases, the scheduling order sets a date by which a party may request a settlement conference. Mr. Bulmer opined that settlement conferences would be rare but that it is important to have a framework for a settlement conference. He moved to amend the subcommittee's proposed changes to ELC 10.12(c)(2) by changing "must" to "may". Mr. Johnson called the vote on Mr. Bulmer's motion. With none opposed, the amendment was adopted.

Mr. Beitel objected to the proposed language in the sample scheduling order contained in the rule that excepts relevancy objections from those objections to exhibits that must be raised pre-hearing. Mr. Bulmer explained that failure to object to exhibits pre-hearing has been treated as an agreement to admit those exhibits. He opined that relevancy objections are never waived and must be allowed at the hearing when an exhibit is introduced. Ms. Balazs noted that a hearing officer cannot determine relevancy until the context is clear. Mr. Beitel moved to strike "other than relevancy" from the rule as proposed. Mr. Johnson called for a second to the motion and hearing none deemed the motion failed. Mr. Johnson moved adoption of the subcommittee's proposed changes to ELC 10.12 as amended. With 1 opposed, the changes were adopted.

The Chair rejoined the meeting before the discussion of ELC 10.13.

**ELC 10.13 – (Disciplinary Hearing) (pp. 962-963)**

Mr. Johnson introduced the subcommittee's proposed changes to ELC 10.13—making it clear that if the respondent does not appear, the hearing goes on—and moved for their adoption. The Chair deemed the motion seconded. Mr. Bulmer supported the amendments, but opined that due process problems may arise where the respondent does not appear though no fault of his or her own.

Mr. Beitel raised ODC's objection to the added language in ELC 10.13(c) limiting the materials that disciplinary counsel may request be brought to hearing to those materials previously requested. Mr. Bulmer argued that the effect of the current rule was to make the discovery cut-off apply only to respondents and not ODC. Mr. Beitel replied that there is no complete discovery in disciplinary hearings and that a disciplinary hearing is not civil litigation between equally matched parties. Mr. Beitel moved to strike "previously requested" from the proposed changes. The Chair deemed the motion seconded and called for a vote. With 1 in favor, Mr. Beitel's propose amendment failed. The Chair then called for a vote on Mr. Johnson's motion to adopt. With 1 opposed, the subcommittee's proposed changes to ELC 10.13 were adopted.

**ELC 10.16 – (Decision of Hearing Officer) (pp,964-965; 1001-1002)**

Ms. Turner called the group's attention to the late materials distributed by email (added to the materials as pp. 1001-1002), and moved that the proposed amendment to the subcommittee's proposed changes—allowing the 30-day period for a hearing officer's findings to run from the service of the transcript—be adopted. Mr. Ende opined that since the time frame for the hearing officer's decision is a "soft" deadline, there is no need to create a procedure around the deadline. Mr. Beitel noted that the amendment would encourage hearing officers to ask for a transcript before completing findings, thus adding to the expense of the process. Mr. Danielson noted that when he served as chief hearing officer, he suggested that hearing officers not order a transcript where the recommendation was likely to be less than a suspension. Ms. Turner observed that hearing officers often do not want to finalize their findings without a transcript. The Chair, having deemed Ms. Turner's motion to amend seconded, called for a vote on the amendment. With 2 opposed, the motion carried.

The Chair called for discussion of Subcommittee A's proposed changes to ELC 10.16 as amended. After some discussion of potential due process issues around the submission of proposed findings before the hearing officer has issued an oral or tentative ruling, Mr. Fine suggested that adoption of the proposed changes to ELC 10.16 be postponed and that he and Mr. Bulmer work together on draft language to address the issues. The Chair agreed, and the discussion of the subcommittee's proposed changes to ELC 10.16 was tabled to the next

meeting. Mr. Fine and Mr. Bulmer will circulate the result of their draft amendment among the task force members before the February meeting.

### **ELC 3.3(c) – (Proceedings When Respondent Asserts Disability)**

Mr. Beitel raised ODC's proposal that disability proceedings be public where the respondent asserts incapacity. He reminded the group that a respondent with a mental disability often leaves a trail of damaged grievants who cannot be informed of the progress of their grievances when a matter is moved to disability proceedings, and that the secrecy surrounding disability proceedings does not protect the public. Mr. Beitel urged the task force to reconsider its decision to reject ODC's proposal. Mr. Bulmer expressed the concerns of Mr. Summers about the stigmatization of those with mental illness. Mr. Bulmer shared the opinion of Mr. Summers that it should be sufficient to inform a grievant that disability issues have been raised and that the respondent is suspended during the proceedings. Mr. Beitel informed the group that if there was no support for the proposal, he would not raise it for an official vote again.

### **Final Matters**

The Chair announced that with the exception of ELC 10.16, which had been tabled, the task force had completed discussion of Subcommittee A's final report. The consent calendar items from Subcommittee C will be moved to the top of the agenda for the next meeting. The Chair confirmed that he anticipated the March 17, 2011 meeting will be the final meeting. The Chair asked for minority reports by the March meeting, noting that staff will do their best to compile the complete draft of proposed changes adopted by March 1, 2011.

### **Next Meetings**

February 3, 2011, 9:00 a.m. to 12:00 noon  
Materials Deadline: Tuesday, January 25, 2011

March 17, 2011, 9:00 a.m. to 12:00 noon  
Materials Deadline: Tuesday, March 8, 2011

### **Adjournment**

The Chair adjourned the meeting at 11:50 a.m.

Minutes Respectfully Submitted by

Scott Busby  
Disciplinary Counsel  
Task Force Staff Reporter

## Memo

To: ELC Drafting Task Force

From: Subcommittee C  
Charlie Wiggins, Chair

Date: July 23, 2010

RE: Additional Items for Consideration on the Consent Calendar

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Subcommittee C has concluded our review of all the items referred to us. By a separate memo we submit additional items which we recommend be discussed by the Task Force. Following are three issues we recommend for consideration on the **Consent Calendar**:

1. The Subcommittee recommends adoption of the following changes to ELC 12.3(d) and ELC 12.4(e) clarify how and where a party appealing to the Supreme Court must pay the filing fee:

### **ELC 12.3 APPEAL [redline]**

(d) Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee ~~and other costs imposed by the Supreme Court~~ based upon a showing of indigency.

### **ELC 12.3 APPEAL [clean copy]**

(d) Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

### **ELC 12.4 DISCRETIONARY REVIEW [redline]**

(e) Filing Fee. The first party to file a petition for discretionary review, must, at the time the petition is filed, either pay the statutory filing fee to the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee ~~and other costs imposed by the Supreme Court~~ based upon a showing of indigency.

### **ELC 12.4 DISCRETIONARY REVIEW [clean copy]**

(e) Filing Fee. The first party to file a petition for discretionary review, must, at the time the petition is filed, either pay the statutory filing fee to

## Consent Items From Subcommittee C

the Clerk of the Disciplinary Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

2. The recommends adoption of the following change to ELC 13.4 clarifying the scope the review by the Disciplinary Board of the language of a proposed reprimand:

### **ELC 13.4 REPRIMAND [redline]**

. . . .

**(b) Notice and Review of Contents.** The Association must serve the respondent with a copy of the proposed reprimand. Within five days of service of the proposed reprimand, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. When timely requested, the Disciplinary Board reviews the proposed reprimand content in light of the decision or stipulation imposing the reprimand and may ~~take any appropriate action~~ amend the content. The Board's action is final and not subject to further review. If no request is received, the content of the reprimand is final, and the reprimand is administered.

### **ELC 13.4 REPRIMAND [clean copy]**

. . . .

**(b) Notice and Review of Contents.** The Association must serve the respondent with a copy of the proposed reprimand. Within five days of service of the proposed reprimand, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. When timely requested, the Disciplinary Board reviews the proposed reprimand content in light of the decision or stipulation imposing the reprimand and may amend the content. The Board's action is final and not subject to further review. If no request is received, the content of the reprimand is final, and the reprimand is administered.

3. The Subcommittee reconsidered the language of ELC 14.1 at the request of Kurt Bulmer who sought clarification as to the level of detail that a respondent lawyer must put in a notice to explain a suspension, disbarment or resignation in lieu of discipline. Mr. Bulmer indicated his approval of the following changes to ELC 14.1(b) and ELC 14.1(c) to deal with his concerns. The Subcommittee also updated the rule to provide for resignations in lieu of discipline and to clarify the language in ELC 14.1(d) regarding what language must be used when notice is given that a lawyer has transferred to disability inactive status. The subcommittee recommends adoption of the following changes:

## **TITLE 14 – DUTIES ON SUSPENSION, OR DISBARMENT, OR RESIGNATION IN LIEU OF DISCIPLINE [redline]**

### **ELC 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY**

**(a) Providing Client Property.** A lawyer who has been suspended from the practice of law, disbarred, has resigned in lieu of discipline, or has been transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

**(b) Notice if Suspended for 60 Days or Less.** A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, ~~the reason therefor~~ that the suspension is a disciplinary suspension, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension, the reason therefor, and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

**(c) Notice if Otherwise Suspended, or Disbarred, or Resigned in Lieu of Discipline.** A lawyer who has been disbarred, has resigned in lieu of discipline, or has been suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11, APR 17, or APR 26, must within ten days of the effective date of the disbarment, ~~or suspension, or resignation:~~

(1) notify every client of the lawyer's suspension, disbarment or resignation in lieu of discipline, ~~the reason therefor~~ whether a suspension is a disciplinary suspension, an interim suspension, or an administrative suspension, and of the lawyer's consequent inability to act as the client's lawyer and ~~the reason therefor,~~ and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's suspension, disbarment, or resignation in lieu of discipline, the reason therefor, and the inability to act further on the client's

behalf.

**(d) Notice if Transferred to Disability Inactive Status.** A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that while the notices need not refer to the specifics of the disability, the notice must advise that the lawyer has been transferred to disability inactive status.

**(e) Address of Client.** All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5(b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

## **TITLE 14 – DUTIES ON SUSPENSION, OR DISBARMENT, OR RESIGNATION IN LIEU OF DISCIPLINE [clean copy]**

### **ELC 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY**

**(a) Providing Client Property.** A lawyer who has been suspended from the practice of law, disbarred, has resigned in lieu of discipline, or has been transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

**(b) Notice if Suspended for 60 Days or Less.** A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, that the suspension is a disciplinary suspension, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension, the reason therefor, and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

**(c) Notice if Otherwise Suspended, Disbarred, or Resigned in Lieu of Discipline.** A lawyer who has been disbarred, has resigned in lieu of discipline, or has been suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11, APR 17, or APR 26, must within ten days

## Consent Items From Subcommittee C

of the effective date of the disbarment, suspension, or resignation:

(1) notify every client of the lawyer's suspension, disbarment or resignation in lieu of discipline, whether a suspension is a disciplinary suspension, an interim suspension, or an administrative suspension, and of the lawyer's consequent inability to act as the client's lawyer and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's suspension, disbarment, or resignation in lieu of discipline, the reason therefor, and the inability to act further on the client's behalf.

**(d) Notice if Transferred to Disability Inactive Status.** A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that while the notices need not refer to the specifics of the disability, the notice must advise that the lawyer has been transferred to disability inactive status.

**(e) Address of Client.** All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5(b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

## Memo

To: ELC Drafting Task Force

From: Subcommittee C  
Charlie Wiggins, Chair

Date: July 23, 2010

RE: Additional Items for Consideration as Discussion Items

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Subcommittee C has concluded our review of all the items referred to us. By a separate memo we submit additional items which we recommend be consider by the Task Force on the consent calendar.

In this memo we forward the following items **to be discussed** by the Task Force:

1. ABA Recommendation No. 24 recommended amending ECL 14.2 to clarify that a lawyer disbarred, suspended or on disability inactive status cannot work in a law office or as a paralegal. See Materials at 131- 32. At their April 2009 meeting, the Board of Governors, by a vote of 10-1-2, approved the recommendation that the rules be so clarified. The Board's minutes noted that a member of the Family Law Section Executive Committee suggested "clarification of all aspects of what a disbarred or suspended lawyer can and cannot do." See Materials at 487- 88.

Although RPC 5.8(b) prohibits a practicing lawyer from maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended lawyer or a lawyer who has resigned in lieu of disbarment, ELC 14.2, which prohibits disbarred, suspended and disability inactive lawyers from practicing, does not address a prohibition on such an individual working in a law office in a capacity such as a paralegal, although this would reasonably be deduced from RPC 5.8(b). Several changes are needed to provide better coordination between RPC 5.8(b) and ELC 14.2. We recommend two sets of changes to accomplish this.

First, the two rules need to apply to the same groups. Currently, ELC 14.2 applies to disbarred lawyers, suspended lawyers and lawyers transferred to disability inactive. Not included are lawyers who have resigned in lieu. RPC 5.8(b) currently does apply to lawyers who have resigned in lieu, as well as to disbarred or suspended lawyers, but appears not to apply to lawyers on disability inactive. We propose changes to both ELC 14.2 and RPC 5.8(b) so that both rules apply to the same four groups:

- Disbarred lawyers
- Suspended lawyers
- Lawyers who have resigned in lieu of discipline (previously in lieu of disbarment)
- Lawyers transferred to disability inactive.

Second, we believe that the operative language as to what is permitted and what is prohibited in terms of employment of these individuals in a law office needs to be located in only one of the rules. Having operative language in both sets of rules invites differing interpretations over the years. We believe that the best place for the operative language is in RPC 5.8(b) because that is where the operative language has historically been, and because there is a well developed system for interpretation of the language, see Formal Opinion 184 and Informal Opinion 2142. In addition, a lawyer who is approached by a suspended/disbarred, etc., lawyer and who has a question about whether a particular employment arrangement is permissible under the rule can make an inquiry to the Rule of Professional Conduct Committee and obtain guidance. There is no similar mechanism for getting an opinion as to the interpretation to be given an ELC provision. We have proposed a new ELC 14.2(c) which references to RPC 5.8 for the operative language.

In light of the comments in the minutes of the Board of Governors encouraging greater clarification as to just what disbarred/suspended/resigned in lieu/disability inactive lawyers can and cannot do, we also propose adding two additional comments to RPC 5.8. These are adapted from the two substantive paragraphs of Opinion 184 (as amended 2009, copy attached) which give specific guidance as to the specific types of work that are permitted and the specific types of work that are prohibited.

The Subcommittee unanimously recommended the following proposed changes be considered by the Task Force as a discussion item, with the Subcommittee unanimously recommending approval of the proposed changes.

#### **Draft Rule Changes to ELC 14.2:**

##### **ELC 14.2 LAWYER TO DISCONTINUE PRACTICE [redline]**

**(a) Discontinue Practice.** A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law.

**(b) Continuing Duties to Former Clients.** This rule does not preclude a disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the ~~suspended or disbarred~~ lawyer not be involved in any discussion regarding matters occurring after the date of the suspension, resignation in lieu of disbarment or discipline, transfer to disability inactive, or disbarment. The lawyer must provide this information on request and without charge.

**(c) Working In Law Office Prohibited.** A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment, or a lawyer who

has resigned in lieu of discipline, or a lawyer transferred to disability inactive status is prohibited from employment by a lawyer or law firm as provided in Rule of Professional Conduct 5.8.

**ELC 14.2 LAWYER TO DISCONTINUE PRACTICE [clean copy]**

**(a) Discontinue Practice.** A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, resignation in lieu of disbarment or discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law.

**(b) Continuing Duties to Former Clients.** This rule does not preclude a disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment or discipline, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the lawyer not be involved in any discussion regarding matters occurring after the date of the suspension, resignation in lieu of disbarment or discipline, transfer to disability inactive, or disbarment. The lawyer must provide this information on request and without charge.

**(c) Working In Law Office Prohibited.** A disbarred or suspended lawyer, or a lawyer who has resigned in lieu of disbarment, or a lawyer who has resigned in lieu of discipline, or a lawyer transferred to disability inactive status is prohibited from employment by a lawyer or law firm as provided in Rule of Professional Conduct 5.8.

**Draft Rule Changes to RPC 5.8(b):**

**RPC 5.8  
MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED,  
AND INACTIVE LAWYERS [redline]**

**(a)** A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

**(b)** A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer, or who has resigned in lieu of disbarment or discipline, or who has been transferred to disability inactive status:

- (1) practice law with or in cooperation with such an individual;
- (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

- (3) permit such an individual to use the lawyer's name for the practice of law;
- (4) practice law for or on behalf of such an individual; or
- (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

#### Washington Comments

[1] The provisions of this Rule were taken from former Washington RPC 5.5(d) and (e) (as amended in 2002).

[2] This rule prohibits a lawyer from hiring or employing a lawyer in connection with or related to the practice of law who is disbarred, suspended, or a lawyer who is on disability inactive status or who has resigned in lieu of disbarment or discipline. It does not prohibit a lawyer from hiring such an individual in capacities not involving the practice of law. Thus, a lawyer may employ such an individual in other, nonlaw-related capacities from such mundane tasks as mowing lawns or washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law.

[3] This rule clearly prohibits a lawyer from sharing offices with a disbarred or suspended lawyer, or a lawyer who is on disability inactive status or a lawyer who has resigned in lieu of disbarment or discipline, or from having any arrangement with such an individual which relates to the practice of law. A disbarred or suspended lawyer, or a lawyer who is on disability inactive status, or a lawyer who has resigned in lieu of disbarment or discipline, may not be employed as a paralegal or law clerk, may not be employed to do legal research or writing, or work as a law office secretary or other office employee. Neither may such an individual be employed as an investigator, messenger, or accountant in connection with a lawyer's law practice, because that would constitute a violation of the prohibition against "practic[ing] law under any arrangement or understanding for division of fees or compensation of any kind with such an individual."

### **RPC 5.8 MISCONDUCT INVOLVING DISBARRED, SUSPENDED, RESIGNED, AND INACTIVE LAWYERS [clean copy]**

- (a)** A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.
- (b)** A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer, or who has resigned in lieu of disbarment or discipline, or who has been transferred to disability inactive status:
  - (1) practice law with or in cooperation with such an individual;
  - (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

- (3) permit such an individual to use the lawyer's name for the practice of law;
- (4) practice law for or on behalf of such an individual; or
- (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

#### Washington Comments

[1] The provisions of this Rule were taken from former Washington RPC 5.5(d) and (e) (as amended in 2002).

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[3] This rule clearly prohibits a lawyer from sharing offices with a disbarred or suspended lawyer, or a lawyer who is on disability inactive status or a lawyer who has resigned in lieu of disbarment or discipline, or from having any arrangement with such an individual which relates to the practice of law. A disbarred or suspended lawyer, or a lawyer who is on disability inactive status, or a lawyer who has resigned in lieu of disbarment or discipline, may not be employed as a paralegal or law clerk, may not be employed to do legal research or writing, or work as a law office secretary or other office employee. Neither may such an individual be employed as an investigator, messenger, or accountant in connection with a lawyer's law practice, because that would constitute a violation of the prohibition against "practic[ing] law under any arrangement or understanding for division of fees or compensation of any kind with such an individual."

**Attachment: Formal Opinion 184**

**Formal Opinion: 184**

**Year Issued: 1990**

**RPC(s): RPC 5.8(b), Oregon Formal Opinion 2005-24**

**Subject: Lawyer in Good Standing May Not Employ a Disbarred Lawyer in Connection with the Practice of Law**

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In 1978, Formal Opinion #171 was adopted which stated that "an attorney in good standing who hires a disbarred lawyer in any capacity could be subject to discipline for a violation of the [former] Discipline Rules for Attorneys."

The Board of Governors is of the opinion that the Rules for Lawyer Discipline do not require an absolute prohibition against employing disbarred lawyers "in any capacity" and therefore believes that Formal Opinion #171 should be withdrawn. This opinion does not address the employment of suspended lawyers.

The Rules of Professional Conduct address the issue at RPC 5.8(b):

A lawyer shall not engage in any of the following with an individual who is a disbarred or suspended lawyer or who has resigned in lieu of disbarment:

- (1) practice law with or in cooperation with such an individual;
- (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;
- (3) permit such an individual to use the lawyer's name for the practice of law;
- (4) practice law for or on behalf of such an individual; or
- (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

This rule prohibits a lawyer from hiring or employing a disbarred lawyer in connection with or related to the practice of law. It does not prohibit a lawyer from hiring a disbarred lawyer in capacities not involving the practice of law. Thus, a lawyer may employ a disbarred lawyer in other, nonlaw-related capacities from such mundane tasks as mowing lawns or washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law.

## Discussion Items From Subcommittee C

This rule clearly prohibits a lawyer from sharing offices with a disbarred lawyer or having any arrangement with a disbarred lawyer which relates to the practice of law. A disbarred lawyer may not be employed as a paralegal or law clerk, may not be employed to do legal research or writing, or work as a law office secretary or other office employee. Neither may a disbarred lawyer be employed as an investigator, messenger or accountant in connection with a lawyer's law practice, because that would constitute a violation of the prohibition against "practic[ing] law under any arrangement or understanding for division of fees or compensation of any kind" with a disbarred lawyer.

We recognize that other jurisdictions may have different rules regarding the employment of disbarred lawyers, (see, e.g., Oregon Formal Opinion 2005-24). We are of the opinion that the restrictions imposed by RPC 5.8(b) do not prohibit a Washington lawyer from associating with a lawyer or law firm which employs a disbarred lawyer or lawyers in a jurisdiction which permits it, nor does the rule prohibit a lawyer practicing law in Washington from being a member of a law firm with offices in such a jurisdiction.

Formal Opinion #171 is withdrawn.

[amended 2009]

2. During the July 14, 2010 meeting of Subcommittee C Kurt Bulmer submitted by attachment to an e-mail a memo related to costs and expenses under ELC 13.9 for consideration by the Subcommittee. The Subcommittee noted that it had reported this issue for consideration by the full Task Force on the agenda for the June 10, 2010 meeting [see Materials pp. 754-57], but that the Task Force did not get to that item and set it over for consideration at a subsequent Task Force meeting. The Subcommittee did not substantively discuss Mr. Bulmer's proposal, but voted to attach his memo to this report to the Task Force with a recommendation that Mr. Bulmer's memo be part of the discussion by the Task Force of ELC 13.9 at pp. 754-57.

Mr. Bulmer's Memo Attached

MEMORANDUM

TO: Subcommittee C

FROM: Kurt M. Bulmer

DATE: July 14, 2010

Re: COSTS/EXPENSES – CURRENT ELC 13.9

I propose deletion of ELC 13.9 in its entirety. That section provides for costs and expenses to be assessed against a respondent who has been sanctioned or admonished. There is no provision for costs and expenses to be awarded in favor of a respondent who prevails in a bar proceeding.

According to the Bar's audits the 2009 budget for funding the disciplinary system was \$4,433,320. The amount recovered in costs collected was \$62,303. That is .014%. In 2008 it was \$4,157,006 and \$124,513 for .03% and in 2007 it was \$3,952,171 and \$76,375 for .019%. The process of gathering the costs, preparing various declarations, motions and orders by ODC and accounting staff, review of these by the Chair of the Board and the Clerk to the Court followed by collection efforts also undertaken by ODC personnel is a great deal of work which results in an even small actual return. It appears that the "net" amount collected by the WSBA is a very small percentage of the total and is also very small in real dollar amounts.

Offset this with the extreme chilling effect the costs have on the respondent's right to defend. While the amounts collected are small in comparison to \$4.4 million spent by the Association, these amounts can nonetheless loom very large for individual respondents. While I do not have a complete picture of the costs and expenses assessed, I have to advise my clients that if we go forward to a hearing to contest and get an admonition which is then not appealed they need to be thinking in at least the \$3,000 range as the floor and take it from there with \$6,000 to \$14,000 being not unusual. If there are significant factual issues the hearing will last several days if not two weeks. Transcript costs run at roughly \$1,000 per day. Witness costs and expert costs, something we are seeing more and more of, are, of course, additional. The assessment of costs has become a significant factor in determining whether to accept a stipulation offer or to contest the proceeding.

The result is that lawyers are accepting sanctions for purely economic reasons which gives the WSBA a significant advantage in prosecuting cases. This advantage is not based on the merits. There is a very low social utility gained by the small cost recoveries and a very high social cost because obtaining the opportunity to be heard, plead your case and seek justice is being driven by the size of the lawyer's bank account.

## **ELC 7.1 and 1.5 and RPC 8.4:**

[Note: This draft was reported, without a recommendation, in the Subcommittee B report of January 5, 2010 (p. 627-29). It does not appear that the Task Force acted on the draft, so it is repeated here.]

### **ELC 7.1 ~~INTERIM SUSPENSION FOR~~ PROCEDURE ON CONVICTION OF A CRIME** **(a) Definitions.**

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) ~~"Serious crime" includes any:~~

~~(A) felony;~~

~~(B) crime a necessary element of which, as determined by its statutory or common-law definition, includes any of the following:~~

- ~~• interference with the administration of justice;~~
- ~~• false swearing;~~
- ~~• misrepresentation;~~
- ~~• fraud;~~
- ~~• deceit;~~
- ~~• bribery;~~
- ~~• extortion;~~
- ~~• misappropriation; or~~
- ~~• theft; or~~

~~(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".~~

~~"Felony" includes any crime denominated as a felony in the jurisdiction in which it is committed.~~

**(b) ~~Court Clerk To Advise Association Reporting of Conviction.~~** When a lawyer is convicted of a crime felony, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction the lawyer must report the conviction to disciplinary counsel within 30 days of the conviction as defined by this rule.

### **(c) Disciplinary Procedure upon Conviction.**

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

~~(2) If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so, disciplinary counsel proceeds in the same manner as for a felony.~~

~~—(3) If a lawyer is convicted of a crime that is neither not a felony nor a serious crime, the review committee may considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.~~

**(d) Petition.** A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. ~~If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime.~~ Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

**(e) Immediate Interim Suspension.**

~~(1) Upon the filing of a petition for suspension under this rule, the Court determines whether the crime constitutes a serious crime felony as defined in section (a).~~

~~(1) If the crime is a felony, the Court must enter an order immediately suspending the respondent from the practice of law.~~

~~(2) If the crime is ~~not~~ a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent from the practice of law. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest.~~

~~(3) If the Court determines that the crime is not a serious crime felony, upon being so advised, the Association processes the matter as it would any other grievance.~~

~~(34) If suspended, the respondent must comply with title 14.~~

~~(45) Suspension under this rule occurs:~~

~~(A) whether the conviction was under a law of this state, any other state, or the United States;~~

~~(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and~~

~~(C) regardless of the pendency of an appeal.~~

**(f) Duration of Suspension.** A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise. A copy of the final decision, stipulation or order terminating the disciplinary proceeding will be provided to the Court.

**(g) Termination of Suspension.**

~~(1) *Petition and Response.* A respondent may at any time petition the Board to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. The Chair may direct disciplinary counsel to investigate as appears appropriate. If disciplinary counsel recommends that the suspension should be terminated, the Clerk will transfer the petition and response to the Court for its consideration.~~

(2) *Board Recommendation.* If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.

(3) *Court Action.* The Court determines the procedure for its consideration of a recommendation to terminate a suspension.

~~(h) **Notice of Dismissal to Supreme Court.** If disciplinary counsel has filed a petition for suspension under this rule, and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.~~

### **ELC 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES**

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

.....

- pay costs, rule 5.3(f) or 13.9; or
- report the lawyer's felony conviction, rule 7.1(b).

### **RPC 8.4 MISCONDUCT.**

It is professional misconduct for a lawyer to:

....

(o) Fail to report the lawyer's felony conviction to disciplinary counsel as required by ELC 7.1.

# Memo

To: ELC Drafting Task Force  
From: Office of Disciplinary Counsel  
Date: December 3, 2010  
RE: Update ELC 2.6(b) to Conform to CJC Changes

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## Proposal:

ELC 2.6(b) currently notes that the substantive provisions in ELC 2.6 regarding hearing officer conduct have been adapted from Canon 2 and Canon 3 of the Code of Judicial Conduct (CJC). ELC 2.6(b) does not itself set forth any substantive provisions for hearing officer conduct, it just explains where the substantive provisions came from.

A substantial revision to the CJC has been adopted and takes effect January 1, 2011. In the course of that revision, various provisions have been moved around, which makes continued citation to Canon 2 and Canon 3 problematic. For example, ELC 2.6(c) requires that hearing officers avoid the appearance of impropriety. This was originally drawn from ELC Canon 2. However, with the 2011 changes to the CJC, the provision on avoiding the appearance of impropriety is being moved to Canon 1. We propose a change that deletes reference to individual Canons.

We have also proposed deletion of the language that says “to the extent applicable,” the CJC should guide the hearing officers. This language has been problematic since it leaves open to argument that any provision in the CJC might be applicable, whereas the substantive sections of the rule, ELC 2.6(c), (d), and (e) set out the actual requirements. We propose deleting the “to the extent applicable” language because it is confusing. We propose replacing that with a simply notation that the CJC is useful guidance.

Because the Subcommittees have finished their work, we are sending this directly to the full Task Force.

## Draft Rule Change:

### ELC 2.6 HEARING OFFICER CONDUCT [Redline]

.....

**(b) Integrity of Hearing Officer System.** The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. ~~To the extent applicable, the~~ The Code of Judicial Conduct should guide is useful guidance for hearing officers. The following rules have been adapted from ~~Canon 2 and Canon 3~~ of the Code of Judicial Conduct ~~as particularly applicable to hearing officers~~, and the words “should” and “shall” have the meanings ascribed to them in those rules.

## **ELC 2.6 HEARING OFFICER CONDUCT [Clean Copy]**

....

**(b) Integrity of Hearing Officer System.** The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. The Code of Judicial Conduct is useful guidance for hearing officers. The following rules have been adapted from the Code of Judicial Conduct, and the words “should” and “shall” have the meanings ascribed to them in those rules.

## Memo

To: ELC Drafting Task Force  
From: Office of Disciplinary Counsel  
Date: December 3, 2010  
RE: Administrative Suspension for Failure to File Trust Account Declaration  
ELC 15.5; ELC 1.5

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### Proposal:

ELC 15.5(b) provides for a disciplinary approach to lawyers who fail to file the annual trust account declaration. Currently, we are not opening disciplinary grievances against lawyers who do not file trust account declarations. At times in the past, ODC opened disciplinary investigations each year on the lawyers who fail to file a trust account declaration to determine the reason for the failure and then to pursue appropriate discipline based on the particular circumstances. This approach embroils lawyers in disciplinary investigations and proceedings for conduct that is more appropriately dealt with administratively. A simple, but effective, administrative suspension system, the way we do for failure to provide the annual insurance disclosures, would require no disciplinary resources and would more quickly get the lawyer's attention and secure compliance. Furthermore, the WSBA Bylaws were amended in September, 2010, to provide for administrative suspension for failure to file trust account declarations. We want to make the ELC provision consistent with the WSBA Bylaws. Our proposal replaces the current ELC 15.5(b) in its entirety with the language of APR 26(c), which was adopted in 2007 to deal with failing to file the required insurance disclosure. The Regulatory Services Department advises us that this system is working well.

Note, that although this proposal would eliminate the language now in ELC 15.5(b) about a lawyer possibly being subjected to an audit for failing to file a trust account declaration, that rarely, if ever, has happened, and the revised language of ELC 15.1(b) that the Task Force has tentatively approved (Materials at 618) makes it clear that an audit can be instituted as part of a disciplinary investigation under ELC 5.3 whenever disciplinary counsel becomes aware of potential violations.

We have also recommended deleting the word "questionnaire" from ELC 15.5(a) as the practice for some years has been to use a declaration rather than a questionnaire. We also have adjusted the language in ELC 15.5(a) to allow for changes in the technology of how the information gets reported to the Association.

All of these changes would also conform the ELC to the recent (September 24, 2010) amendment to the WSBA Bylaws, providing at Title III, Clause I, Section(3)(a)(3) that "a member may be administratively suspended for . . . (3) failure to file a trust account declaration (ELC 15.1(b))."

We also propose a conforming amendment to ELC 1.5 to delete the reference to disciplinary action for failure to file a trust account declaration or questionnaire and to limit that reference to only the disciplinary liability for filing false information.

Because the Task Force is nearing the conclusion of its work, we are submitting this directly to the full Task Force for consideration.

**Draft Rule Change:**

**ELC 15.5 DECLARATION OR QUESTIONNAIRE [redline]**

**(a) Questionnaire Declaration.** ~~The Association annually~~ sends each active lawyer ~~must provide the Association a~~ with such written declaration or questionnaire ~~other information as the Association designed determines to determine whether is needed to assure that~~ the lawyer is complying with RPC 1.15A. Each active lawyer must complete, execute, and deliver this to the Association ~~this declaration or questionnaire by the date specified in the declaration or questionnaire by~~ the Association.

**(b) Noncompliance.** ~~Failure to file the declaration or questionnaire by the date specified in section (a) is grounds for discipline. This failure also subjects the lawyer who has failed to comply with this rule to a full audit of his or her books and records as provided in rule 15.1(c), upon request of disciplinary counsel to a review committee. A copy of any request made under this section must be served on the lawyer. The request must be granted on a showing that the lawyer has failed to comply with section (a) of this rule. If the lawyer should later comply, disciplinary counsel has discretion to determine whether an audit should be conducted, and if so the scope of that audit. A lawyer audited under this section is liable for all actual costs of conducting such audit, and also a charge of \$100 per day spent by the auditor in conducting the audit and preparing an audit report. Costs and charges are assessed in the same manner as costs under rule 5.3(f). Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies. Supplying false information in response to this rule shall subject the lawyer to appropriate disciplinary action.~~

**ELC 15.5 DECLARATION [clean copy]**

**(a) Declaration.** Annually, each active lawyer must provide the Association with such written declaration or other information as the Association determines is needed to assure that the lawyer is complying with RPC 1.15A. Each active lawyer must complete, execute, and deliver this to the Association by the date specified by the Association.

**(b) Noncompliance.** Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies. Supplying false information in response to this rule shall subject the lawyer to appropriate disciplinary action.

### **ELC 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES**

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(f);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 10.11(g) and 5.5;
- attend a hearing and bring materials requested by disciplinary counsel, rule 10.13(b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2(f);
- report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a);
- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- ~~file a declaration or questionnaire certifying compliance with RPC 1.15A,~~ supplying false information in connection with rule 15.5;
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(f) or 13.9.

# Memo

To: ELC Drafting Task Force  
From: Office of Disciplinary Counsel  
Date: January 24, 2011  
RE: Clarify Effect of Supplemental Proceedings on Pending Disciplinary Matters.  
ELC 8.3(d)(2), and conforming amendments to related rules

---

## Proposal:

We recently had occasion to consider the effect of the commencement of supplemental proceedings under ELC 8.3 on investigations and other disciplinary proceedings pending against the respondent, and found the provisions of ELC 8.3(d)(2) to be problematically ambiguous. While the ELC provides for two types of disciplinary matters, investigations and proceedings, the current rule references only disciplinary proceedings. ELC 10.3(b) provides that a “disciplinary **proceeding** commences when the formal complaint is filed.” ELC 5.1 authorizes **investigations**, providing that disciplinary counsel “may **investigate** an alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law.” In addition to a restructure of the sentence to improve clarity, we propose three changes to the rule:

1. ELC 8.3(d)(2) currently provides for deferral of the disciplinary proceedings. Deferral is a poor word choice because it can be confused with the deferral of investigations provided for by ELC 5.3. We propose to have the hearing officer “indefinitely stay” the disciplinary proceedings pending the outcome of supplemental proceedings.
2. Because the current ELC 8.3(d)(2) could be read to apply only to the disciplinary proceeding in which the ELC 8.3 incapacity to defend issue has been raised, there is potential for confusion as to what should happen to both other pending proceedings and investigations once supplemental proceedings have been order. We propose a clarification to provide that all other pending proceedings (those matters in which a formal complaint has been filed, See ELC 10.3(b)) are also to be indefinitely stayed, since it would not be appropriate to proceed with other formal proceedings against a respondent when any supplemental proceedings to determine capacity to defend are pending.
3. Finally, we propose adding a provision as to what happens to pending investigations. We believe it is appropriate to authorize, but not require, disciplinary counsel to defer such investigations. Under our proposal, deferral is discretionary with disciplinary counsel, since there are times in supplemental proceedings when it is important to proceed with an investigation before evidence grows stale or unavailable. We have included a proposed amendment to ELC 5.3(c) to provide grievants and respondents the ability to request review by a Review Committee of such decisions. We also propose several conforming amendments that will be needed.

**Draft Rule Change:**

**ELC 8.3 DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS**

.....

**(d) Procedure for Supplemental Proceedings.**

.....

- (2) ~~Deferral of Effect on Pending Disciplinary Proceedings Matters. The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding. Pending the outcome of the supplemental proceedings, the hearing officer, or the chief hearing officer if no hearing officer has been appointed, must order any disciplinary proceedings pending against the respondent indefinitely stayed. Disciplinary counsel may defer any pending disciplinary investigation in accordance with the provisions of rule 5.3(c).~~

**Conforming Amendments:**

**ELC 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, AND DIVERSION CONTRACTS**

.....

**(b) Application to Disability Proceedings.** Disability proceedings under title 8 are confidential. However, a grievant may be advised that a lawyer against whom the grievant has complained is subject to disability proceedings. The following information is public:

- (1) that a lawyer has been transferred to disability inactive status, or has been reinstated to active status; and
- (2) that a disciplinary proceeding is stayed ~~deferred~~ pending supplemental proceedings under title 8.

**ELC 5.3 INVESTIGATION OF GRIEVANCE**

.....

**(c) Deferral by Disciplinary Counsel.**

- (1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:
  - (A) if it appears that the allegations are related to pending civil or criminal litigation;
  - (B) if it appears that the respondent lawyer is physically or mentally unable to respond to the investigation;
  - (C) if a hearing has been ordered under rule 8.2(a) or supplemental proceedings have been ordered under rule 8.3(a); or
  - ~~(C)~~ (D) for other good cause, if it appears that the deferral will not endanger the public.

.....

### ELC 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

.....

**(b) Form.** The stipulation must:

- (1) state with particularity the nature of the respondent's incapacity to practice law and the nature of any pending disciplinary proceedings that will be stayed and any disciplinary investigations that will be deferred as a result of the respondent's transfer to disability inactive status;

.....

### ELC 8.8 REINSTATEMENT TO ACTIVE STATUS

.....

**(f) Petition Granted.** If the petition for reinstatement is granted, the Association immediately restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer. If a disciplinary proceeding has been stayed, or a disciplinary investigation has been deferred because of the disability transfer, the proceeding or investigation resumes upon reinstatement.

**Fine and Bulmer Recommendation regarding proposed ELC**  
**10.16(b) – page 932**

The hearing officer writes findings of fact, conclusions of law, and recommendations without submission of proposed findings, conclusions, or recommendations from the parties. Alternatively, the hearing officer may first announce a tentative decision and then request one or both parties to prepare and present proposed findings, conclusions, and recommendations. After notice and an opportunity to be heard, the hearing officer shall consider the proposal and enter findings, conclusions, and recommendations.

## Memo

To: ELC Drafting Task Force

From: Subcommittee C

Date: June 2, 2010

RE: Items Recommended For Discussion [Held Over from June 10, 2010 Meeting]

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### **We recommend the following proposals be considered for discussion by the full Task Force:**

1. Mr. Sheldon has asked that the full Task Force have a discussion regarding the issue of granting ODC the same right of appeal to the Supreme Court as respondents. This issue was previously discussed by the Task Force in September 2009, at which time the Task Force noted the Board of Governors decision to add a right of appeal for ODC, and following discussion, voted 6 to 4 to provide a right of appeal for ODC. See minutes at pp. 549-50. Based on that direction, the Subcommittee has prepared the appropriate amendments to ELC 12.3 and ELC 12.4. Mr. Sheldon does not contest any provision of the drafting of the proposed amendments to ELC 12.3 or ELC 12.4, instead, he asks that the Task Force reconsider the decision to allow ODC a right of appeal. The Subcommittee recommends that the Task Force have the discussion requested by Mr. Sheldon. Because there is no objection to the particular wording of the proposed amendments to ELC 12.3 and ELC 12.4, we have included the proposed amendments on the consent calendar, subject, of course, to any decision by the Task Force to reconsider the decision to allow ODC a right of appeal.
2. By a vote of 4 to 1, the Subcommittee recommends the Task Force approve the following proposed amendment to ELC 13.9. This is a modification of the original ODC proposal (Materials p. 512-13) to provide for costs and expenses when reciprocal discipline is imposed. The Subcommittee modified that proposal to provide for such costs and expenses only after a contested reciprocal proceeding that has required briefing.

#### **ELC 13.9 COSTS AND EXPENSES [Redline]**

**(a) Assessment.** The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished, or against whom reciprocal discipline is imposed after a contested reciprocal discipline proceeding.

....

**(c) Expenses Defined.** "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

- (1) for an admonition that is accepted under rule 13.5(a), \$750;

(2) for a matter that becomes final without review by the Board, \$1,500;  
(3) for a matter that becomes final upon a reciprocal discipline order under rule 9.2 or rule 9.3, in a matter requiring briefing at the Supreme Court, \$1,500;

(~~3~~ 4) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of \$2,000;

(4 5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of \$2,500; and

(~~5~~ 6) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of \$3,000.

**(d) Statement of Costs and Expenses, Exceptions, and Reply.**

(1) *Timing.* Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer or panel or the Board imposing an admonition or a sanction becomes final;

(C) a notice of appeal from a Board decision is filed and served; ~~or~~

(D) the Supreme Court accepts or denies discretionary review of a Board decision; or

(E) entry of a final decision imposing reciprocal discipline under rule 9.2 or rule 9.X in a matter requiring briefing at the Supreme Court.

(2) *Content.* A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

(3) *Service.* The Clerk serves a copy of the statement on the respondent.

(4) *Exceptions.* The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) *Reply.* Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

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.....

3. By a vote of 3 to 1, with 1 abstention, the Subcommittee recommends that the Task Force reject the ODC proposal set forth at p. 429 – 31 of the Materials to eliminate the distinction between sanctions and admonitions, which would make an admonition a type of sanction. The change proposed by ODC would make the following change to ELC 13.1, along with a number of other conforming changes to other rules:

**ELC 13.1 SANCTIONS AND REMEDIES [Redline]**

Upon a finding that a lawyer has committed an act of misconduct, one or more of the following may be imposed:

**(a) Sanctions.**

- (1) Disbarment;
- (2) Suspension ~~under rule 13.3; or~~
- (3) Reprimand; ~~or~~

~~(b) Admonition.~~ (4) An admonition under rule 13.5.

**(c) Remedies.**

- (1) Restitution;
- (2) Probation;
- (3) Limitation on practice;
- (4) Requirement that the lawyer attend continuing legal education courses;
- (5) Assessment of costs; or
- (6) Other requirements consistent with the purposes of lawyer discipline.

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- (1) Restitution;
- (2) Probation;
- (3) Limitation on practice;
- (4) Requirement that the lawyer attend continuing legal education courses;
- (5) Assessment of costs; or
- (6) Other requirements consistent with the purposes of lawyer discipline.

4. The Subcommittee recommends the Task Force discuss ABA Recommendation No. 22, to have the Disciplinary Board and the Supreme Court administer reprimands, as opposed to the current provision in ELC 13.4(a) which provides that "The Association administers a reprimand to a respondent lawyer by written statement signed by it's President." The Subcommittee notes the action by the Board of Governor's reflected in their January 22, 2009 Minutes (Materials at p. 474). By a vote of 10-1-1, the Board of Governors adopted the ABA recommendation that the Disciplinary Board and the Court administer reprimands. The Subcommittee notes, however, that this recommendation was part of a series of recommendations to remove the administration of lawyer discipline from the WSBA. That specific recom-

mendation was rejected, which removes much of the reason behind the proposal to change the current system of the President of the WSBA signing reprimands. The Subcommittee discussed that the Chief Justice could sign the reprimands, but it was pointed out that the Chief's administrative duties are quite extensive and that this addition could be problematic. Given that, the Subcommittee considers the President of the WSBA to be the next most impressive person to sign a reprimand and therefore the best choice. By a vote of 4-0-1 the Subcommittee voted to recommend that despite the Board of Governors' January 22, 2009 action, that the Task Force recommend rejection of ABA Recommendation 22 and that we retain the current provisions in ELC 13.4(a) providing for reprimands to be issued by the Association and signed by the WSBA President.

5. The Subcommittee recommends the Task Force discuss the recommendation of a hearing officer (Materials at p. 241) that a respondent lawyer who is found to not have violated the RPC be allowed to recover costs from the WSBA. The Subcommittee vote on the proposal was three members voting to leave the cost provisions the way they are, and two members voting to allow recovery of costs by a respondent when all charges are dismissed.

The Subcommittee has had lively discussions on this topic. Ron Carpenter opposed the proposal, noting that the WSBA was doing the task that had been delegated by the Court, and that such a cost provision would potentially chill ODC from pursuing that task as appropriate. Julie Shankland noted that unlike civil litigation, where the parties decide how they will pursue the litigation, ODC is not in charge of what cases it brings. She noted that Review Committees order matters to hearing, including matters that have not been recommended by ODC for hearing. Randy Beitel noted that because this is not civil litigation, using economic factors is inappropriate, because to the extent that economic issues control, the goal of delivering justice to the public will likely suffer. Mr. Beitel noted while he prefers retaining the current cost provisions, that rather than introduce an economic based system with endless prevailing party analysis for costs, he would consider the complete elimination of costs from the system, as that would assure that only justice issues would be influencing prosecutorial decisions. Patrick Sheldon supported the proposal, indicating that the costs to a respondent to defend an action can be very significant and that these costs are rarely covered by insurance. He indicated that this is an issue of fairness.

Charlie Wiggins indicated that he was torn by the issue, and was interested in knowing how often this happens. Mr. Beitel reported back to the Subcommittee with the following information:

I checked the records from the Board of Governors reports for the three-year time period January 1, 2007 – December 31, 2009:  
2007 - No matters dismissed by hearing officer after hearing.  
2008 - Two matters dismissed by hearing officer after hearing:  
Matter One: Dismissed 10/7/08

Matter Two: Dismissed (no date available – because the original dismissal by disciplinary counsel was more than three years ago, file and computer entry destructed per ELC 3.6 based on respondent request.)

2009 - One matter dismissed 1/12/09 by hearing officer after hearing.

Summary: In the last three years, there have been a total of three cases dismissed by hearing officers following a hearing. Essentially, one a year. This should be compared to the disciplinary actions imposed in these years: 73 disciplinary actions in 2007, 81 disciplinary actions in 2008 and 62 disciplinary actions in 2009. While a not insubstantial of the disciplinary actions were the result of stipulations rather than hearing officer decisions, it is still apparent that dismissals by hearing officers following hearings is a distinct rarity.

Mr. Beitel indicated that one of the three matters involved a grievance that was originally dismissed by disciplinary counsel. The grievant protested, and the Review Committee ordered an admonition. The Respondent then protested the admonition and by operation of the rule, the matter was deemed ordered to hearing. It is little wonder that the matter was dismissed by the hearing officer, but reflects that unlike civil litigation where costs are sometimes used to reign in overzealous litigants, the Office of Disciplinary Counsel is not always in control of what cases are ordered to hearing. Mr. Beitel argued that without bringing some cases that are close calls, we are not doing the job necessary to protect the public.

Ron Carpenter submitted additional written comments for the Subcommittee on May 14, 2010:

**Comments submitted by Ron Carpenter- 5/14/10:**

ELC 13.9(a) generally provides for an assessment of allowable costs and expenses in favor of the Bar Association (Association) against an attorney “who is ordered sanctioned or admonished.” ELC 13.9(g) additionally provides for an assessment for costs and expenses “in favor of the Association” upon the filing of an opinion by this Court imposing a sanction or an admonition. It is significant to note that ELC 13.9(g) makes reference to following the *procedures* set forth in RAP Title 14, but it does not define or establish a substantive right to seek costs and expenses other than as to the Association (contrary to the less specific language of RAP 14.2, which specifies that any party that “substantially prevails on review” will be awarded costs). The purpose statements<sup>[1]</sup> that accompanied ELC 13.9(a)&(g) respectively when they were published in the advance sheets for comments on April 16,

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<sup>[1]</sup> These purpose statements were adopted directly from the “COMMENTS TO Proposed RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC) and Related Amendments to the RULES OF PROFESSIONAL CONDUCT (RPC) ADMISSION TO PRACTICE RULES (APR) and GENERAL RULES (GR) Prepared by Randy Beitel Reporter, Discipline 2000 Task Force”

2002 (145 Wn.2d Proposed –at 181 and 182) stated in pertinent portions:

Section (a) is derived from RLD 5.7(a) with no substantive change. Under this rule costs and expenses may be assessed only against a respondent lawyer. The Discipline 2000 Task Force considered and rejected the concept to allow costs and expenses to be assessed against the Association. (emphasis mine)

and

Section (g) is derived from RLD 5.7(f), modified to allow assessment when an opinion of the Supreme Court imposes an admonition.<sup>[2]</sup>

There are sound reasons for a distinction as to who is entitled to an award of costs in attorney discipline matters, as opposed to general litigants involved in appellate review of trial courts matters. In the administrative process of attorney discipline, unlike general litigation in the lower courts, there is no prevailing party below in the classic sense. The Association is charged with the responsibility of determining if professional misconduct has occurred, and then with making a nonbinding recommendation as to the appropriate nature of any discipline to be imposed by the Supreme Court if the Court upholds any of the Board's findings as to professional misconduct. Pursuant to the Court rules, the Association's duty is to ensure the appropriate regulation of attorney conduct; it has no specific client, nor does it ever prevail during that process in the same manner as a party in normal civil litigation. Its duty under the applicable court rules is to simply conduct the initial hearings on complaints and report its findings and recommendation to the Supreme Court; see ELC 12.2(b).

Although ELC 12.1 states that the Rules of Appellate Procedure serve as a guideline for review by this Court, it does provide: "except as to matters specifically dealt with in these rules." Therefore, one seems forced to conclude that the more specific language of ELC 13.9(a) and (g) is controlling over the general language of RAP 14.2 (that is broader in its designation of who is entitled to be awarded costs in that it allows the award to any party that "substantially prevails on review" in general appellate review matters). Clearly, applying these standards, counsel subject to disciplinary proceedings would not be entitled to an award of costs pursuant to any reasonable interpretation and application of the language of ELC 13.9(a) and (g).

One only needs to refer to page 41 of the May 2010 edition of the Washington State Bar News, the 11<sup>th</sup> line "Discipline", to deter-

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<sup>[2]</sup> This statement is somewhat incomplete in that the rule (both as proposed and adopted) makes reference to the imposition of either a sanction or an admonition, not merely an admonition.

mine that the revenue collected for conducting disciplinary proceedings is far outdistanced by the almost oppressive costs incurred by the Association to conduct disciplinary proceedings (recovery being only about 2% of what is expended yearly by the Association) - the operating net loss is in part paid by every attorney in this state who pays bar dues. Given that there is always presumably at least a probable cause to believe that misconduct has occurred, and that disciplinary proceedings need to be implemented to protect the public, to ever allow costs to be recouped by responding counsel, would most likely have a "chilling effect" on disciplinary counsel's determination to proceed with disciplinary proceedings. The Association's disciplinary counsel are the designated enforcement arm of the system - tantamount to a prosecuting attorney in the criminal arena - and as such should not be dissuaded in doing what they feel is appropriate or vigorously pursuing discipline by the looming threat that, if unsuccessful, costs could be imposed against the Association.

6. The Subcommittee recommends that the Task Force discuss the proposal of a rule amendment to ELC 11.13 that would provide for the availability of sanctions at the Disciplinary Board. By a consensus, the Subcommittee recommends that the Task Force reject the proposal.

**ELC 11.13 CHAIR OR BOARD MAY MODIFY REQUIREMENTS AND IMPOSE SANCTIONS** [Redline]

(a) Upon written motion filed with the Clerk by either party, ~~for good cause shown or on its own motion~~, the Chair or Board may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review.

(b) ~~However, the~~ The time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not, however, be extended or altered.

(c) The procedures and sanctions in RAP 18.9(a) and (d) apply to matters before the Disciplinary Board. The Chair is considered to be the commissioner or clerk for the purposes of this rule.

**ELC 11.13 CHAIR OR BOARD MAY MODIFY REQUIREMENTS AND IMPOSE SANCTIONS** [Clean Copy]

(a) Upon written motion filed with the Clerk by either party, or on its own motion, the Chair or Board may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review.

(b) The time period for filing a notice of appeal in rule 11.2(b)(3)(A) may not, however, be extended or altered.

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